

J. Y. Interpretation No.388 (October 27, 1995) \*

**ISSUE:** Shall an incumbent President who is campaigning for re-election be subject to criminal prosecution, despite the provision of Article 52 of the Constitution, which provides that the President, unless he is recalled or discharged from office, shall not be subject to any criminal prosecution except being charged with rebellion or treason?

**RELEVANT LAWS:**

Article 52 of the Constitution (憲法第五十二條); Criminal Code (刑法); the Presidential and the Vice-Presidential Election and Recall Act (總統副總統選舉罷免法).

**KEYWORDS:**

rebellion (內亂罪), treason (外患罪), criminal prosecution (刑事上之訴究), campaigning for re-election (競選連任). \*\*

**HOLDING:** Article 52 of the Constitution provides that the President, unless he is recalled or discharged, shall not be subject to any criminal prosecution except being charged with crimes in relation to rebellion or treason. This is to pay

**解釋文：**憲法第五十二條規定，總統除犯內亂或外患罪外，非經罷免或解職，不受刑事上之訴究。此係憲法基於總統為國家元首，對內肩負統率全國陸海空軍等重要職責，對外代表中華民國之特殊身分所為之尊崇與保障。

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\*\* Contents within frame, not part of the original text, are added for reference purpose only.

respect to and provide protection for the President, being the head of the State, for his special status as Commander of the Army, Navy and Air Force and assuming other important duties internally, and representing the Republic of China externally. When an incumbent President is campaigning for re-election, the campaign activities shall be governed by the Presidential and the Vice-Presidential Election and Recall Act. However, since his status as the President remains unchanged during the campaign, Article 52 of the Constitution still applies.

**REASONING:** Article 52 of the Constitution provides that the President, unless he is recalled or discharged, shall not be subject to any criminal prosecution except being charged with crimes in relation to rebellion or treason. This is to pay respect to and provide protection for the President, being the head of the State, for his special status as Commander of the Army, Navy and Air Force, promulgating laws, appointing and discharging civil and military officers internally, and representing the Republic of China externally. By

現職總統競選連任時，其競選活動固應受總統副總統選舉罷免法有關規定之規範，惟其總統身分並未因參選而變更，自仍有憲法第五十二條之適用。

**解釋理由書：**憲法第五十二條規定，總統除犯內亂或外患罪外，非經罷免或解職，不受刑事上之訴究。此係憲法基於總統為國家元首，對內肩負統率全國陸海空軍、依法公布法律、任免文武官員等重要職責，對外代表中華民國之特殊身分所為之尊崇與保障。藉以確保其職權之行使，並維護政局之安定，以及對外關係之正常發展。惟此所謂總統不受刑事訴究之特權或豁免權，乃針對其職位而設，並非對其個人之保障，且亦非全無限制，如總統所犯為內亂或外患罪，仍須受刑事上之訴究；如

this provision, the President's exercise of his powers can be ensured and political stability and the development of foreign relations can be maintained. However, the privilege or immunity which excludes the President from criminal prosecution is designed for the post of the President. It is neither given for personal protection, nor is it granted without limitation. If the President commits crimes in relation to rebellion or treason, he shall be subject to criminal prosecution. As to situations under which the President commits crimes other than rebellion and treason, the prosecution for such crimes is to be only temporarily withheld. The application of the Criminal Code or relevant laws which provide for criminal punishment is not permanently excluded.

When an incumbent President is campaigning for re-election, as a candidate, his campaign activities shall be governed by the Presidential and the Vice-Presidential Election and Recall Act. However, his status as President remains unchanged. Under the principle of the supremacy of the Constitution and the

所犯為內亂或外患罪以外之罪，僅發生暫時不能為刑事上訴追之問題，並非完全不適用刑法或相關法律之刑罰規定。

現職總統競選連任時，因其已名列總統候選人，其競選活動固應受總統副總統選舉罷免法有關規定之規範，惟其總統身分並未因參選而變更。依憲法優於法律之法則，現職總統依法競選連任時，除犯內亂或外患罪外，非經罷免或解職，並不得適用刑法及總統副總統選舉罷免法等有關刑罰之規定予以訴

purpose of Article 52 of the Constitution, unless he is recalled or discharged, an incumbent President who is campaigning for re-election, shall not be prosecuted in accordance with the Criminal Code and criminal provisions provided for in the Presidential and the Vice-Presidential Election and Recall Act, except for the commission of rebellion or treason.

究，以符憲法第五十二條之意旨。